

PATENT
Customer No. 22,852
Attorney Docket No. 09812.0753-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Munetake EBIHARA et al.)	Group Art Unit: 2165
)	
Application No.: 10/510,089)	Examiner: Diane D. Mizrahi
)	
Filed: June 20, 2005)	
)	
For: INFORMATION PROCESSING)	Confirmation No.: 4198
DEVICE, LICENSE)	
INFORMATION RECORDING)	
MEDIUM, INFORMATION)	
PROCESSING METHOD, AND)	
COMPUTER PROGRAM)	

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**PETITION TO WITHDRAW FINALITY OF OFFICE ACTION AND WITHDRAW
RESTRICTION REQUIREMENT**

Applicants respectfully petition the Assistant Commissioner to instruct the Examiner to withdraw the finality of the Office Action and to withdraw the restriction requirement dated May 21, 2007. This petition is accompanied by the requisite petition fee of \$130.00 as specified by 37 C.F.R. § 1.17(h) and is being filed within two months of the Final Office Action mailed May 21, 2007 in accordance with 37 C.F.R. § 1.181(f).

On October 19, 2006, the Examiner issued a non-final Office Action rejecting claims 1-19. Upon review of the claims, Applicants filed an amendment on January 12, 2007 cancelling claims 1-19 and adding new claims 20-36. Applicants

choose to add new claims 20-36 to re-write claims 1-19 in accordance with best U.S. practices, but did not significantly alter the scope of the claims, as demonstrated below.

In response, the Examiner issued a final Office Action on April 4, 2007 containing a constructive election to claims 1-19, without providing a rejection for any of the claims. The Examiner indicated that claims "20-36 are withdrawn from consideration as being directed to a non-elected invention." Office Action mailed April 4, 2007 at 3. Applicants had several interviews with the Examiner, and she agreed to withdraw the finality of the Office Action and examine claims 20-36. Interview Summary mailed May 15, 2007 at 1. Nevertheless, the Examiner issued another final Office Action on May 21, 2007, which restated the withdrawal of claims 20-36, failed to provide a rejection for any of the claims, and lead to this Petition.

According to the Examiner, there are no claims pending and under examination in this application. Applicants cancelled claims 1-19, and the Examiner has withdrawn claims 20-36 from consideration. The Examiner has deprived Applicants the right to appeal because no claims are rejected.

M.P.E.P. § 821.03 instructs: "An amendment canceling all claims drawn to the elected invention and presenting only claims drawn to the nonelected invention should not be entered. Such an amendment is nonresponsive." Accordingly, assuming that claims 1-19 were directed to a separate invention from claims 20-36, the Examiner should have provided a Notice of Nonresponsive Amendment, not a final Office Action. Accordingly, the finality of the Office Action mailed May 21, 2007 is improper and should be withdrawn.

Moreover, the Examiner's "constructive election" is improper because claims 1-19, cancelled, are not directed to a distinct invention from claims 20-36 for the purposes of a restriction requirement. Restriction is only proper when examining multiple sets of claims would place a "serious burden" on the Examiner.

M.P.E.P. § 803. There is no burden, let alone a "serious burden," for the Examiner to examine claims 20-36.

Applicants cancelled claims 1-19 and added new claims 20-36 to re-write claims 1-19 in a more readily understood format. For example, the table below demonstrates that claim 20 is a simplified combination of elements previously recited by claims 1 and 2.

Claim 20	Claims 1 and 2
<p>20. An information processing apparatus for granting access to content, comprising:</p> <p style="padding-left: 40px;">a storage unit for storing an attribute information list, the attribute information list identifying a type of information processing apparatus and identifying a function of the information processing apparatus; and</p> <p style="padding-left: 40px;">an interpretation module for determining whether the type and the function included in the attribute information list matches data contained in a property selection list distributed with the content, wherein</p>	<p>(claim 1): An information processing apparatus for performing content use eligibility determination process, comprising:</p> <p style="padding-left: 40px;">(claim 1): a storage unit for storing a property list that is an attribute information list of the information processing apparatus, (claim 2) wherein the property list stored in the storage of unit contains identification information and function information of the information processing apparatus</p> <p style="padding-left: 40px;">(claim 1) usage condition interpretation module for performing content use eligibility determination process through a checking process of checking a property selection list contained in content usage condition information against the property list stored in the storage unit, wherein the usage condition interpretation module</p>

<p>when the type and the function match the data, the information processing apparatus grants access to the content, and</p> <p>when the type and the function do not match the data, the information processing apparatus denies access to the content.</p>	<p>performs a determination process of determining whether data corresponding to property definition data as data constituting the property selection list is present in the property list,</p> <p>(claim 1) and in accordance with a process sequence that decides a next process step based on the result of the determination process and a process setting code accompanying the property definition data, the usage condition interpretation module performs the content use eligibility determination process, wherein the usage condition interpretation module performs a determination process of determining whether the identification information and the function information of the information processing apparatus corresponding to the property definition data as the data constituting the property selection list are contained in the property list.</p>
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A “content use eligibility determination process,” as recited by claim 1, is a process for determining whether the device is “eligible” to use content. Stated otherwise, it is a process for “granting access to content,” as recited by claim 20. While claim 1 recited “a property list that is an attribute information list,” claim 20 simplifies this language by only reciting “an attribute information list.” Finally, while claim 1 recites “decid[ing] a next step . . .” by “determining whether the identification information and the function information of the information processing apparatus . . . are contained in the property list,” claim 20 simplifies this language by reciting the determination in the alternative: either the type (identification information) and function match, or they don’t.

Accordingly, claim 20 is not so different from claims 1 and 2 as to place a serious burden on the Examiner. Claims 21-36 are similarly not so different from claims 3-19 as to place a serious burden on the Examiner. Accordingly, the Examiner's constructive election is improper. Therefore, claims 1-19 are cancelled, claims 20-36 should be examined, and the finality of the Office Action mailed May 21, 2007 should be withdrawn.

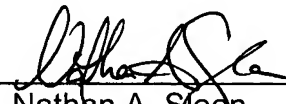
Please grant any extensions of time required to enter this Petition and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: July 19, 2007

By: _____


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